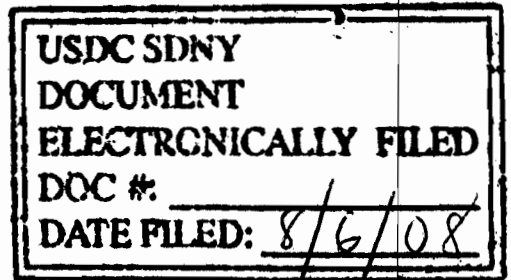


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
:
ROGER SHERWOOD ,

:
:
Petitioner,

:
:
- against -

:
:
RAYMOND J. CUNNINGHAM ,

:
:
Respondent.

-----X
SHIRA A. SCHEINDLIN, U.S.D.J.:

ORDER

07 Civ. 6588 (SAS)

Petitioner Roger Sherwood, proceeding pro se, has filed a Motion for Permission to File Amended Complaint, dated January 16, 2008.¹ Petitioner's proposed Amended Complaint, attached as part of that motion, deletes petitioner's ineffective assistance of counsel claims based on his counsel's actions in: filing a *Clayton* motion; failing to file a motion for permission to present psychiatric evidence; and failing to oppose consolidation of the indictments. Respondent does not oppose the proposed amendments and asks that these claims be dismissed with prejudice.² Accordingly, petitioner's motion is granted and the above

¹ Although styled as a motion to amend a complaint, petitioner is in actuality seeking to amend the petition for a writ of habeas corpus that he filed on July 23, 2007, pursuant to section 2254 of Title 28 of the United States Code.

² See 3/18/08 Letter from Assistant Attorney General Leilani Rodriguez at 1.

ineffective assistance of counsel claims are hereby dismissed with prejudice. The Clerk of the Court is directed to accept petitioner's Amended Complaint for filing.

Petitioner has also filed a Motion for Permission to File Amended Complaint II, dated January 21, 2008. Petitioner's proposed Amended Complaint II, attached as part of that motion, adds a third ground for relief: "The Trial Court's Violation of the Petitioner's Constitutional Rights During Plea Negotiations Rendered his Plea Involuntary." Respondent opposes this motion to amend on the ground that the newly added claim is unexhausted.³

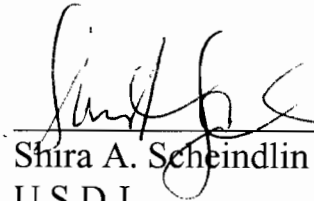
Despite respondent's objection, petitioner's motion to file a second "amended complaint" is hereby granted. Respondent is directed to respond to petitioner's third ground for relief in a supplemental brief. This supplemental brief shall be limited to ten double-spaced pages and is due within thirty days of the date of this Order. Should petitioner wish to reply, he may do so in a brief limited to five double-spaced pages, which is due within fifteen days after service of respondent's supplemental brief.

The Clerk of the Court is directed to accept petitioner's Amended Complaint II for filing. The Clerk of the Court is further directed to close both

³ See *id.* ("This claim is unexhausted because petitioner did not raise this claim in the Appellate Division or any other post-conviction motion.").

motions to amend (Documents # 14 and 15).

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
August 6, 2008

- Appearances -

Petitioner (Pro Se):

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02-A-1335
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